

**ARIZONA JUDICIAL COUNCIL'S
COMMITTEE ON SUPERIOR COURT
MINUTES**

**For Meeting held Friday, January 10, 2003
State Courts Building, Conference Rooms 345 A & B
Phoenix, AZ**

MEMBERS PRESENT:

Hon. Fred Newton, Chair
Hon. Silvia Arellano
Hon. James Chavez
Hon. Norman Davis
Ms. Deborah Dyson
Hon. Patricia Escher
Hon. Charles Harrington
Hon. Douglas Holt
Hon. Brian Ishikawa
Hon. Michael Jeanes
Hon. Gloria Kindig
Mr. Gary Krcmarik

Hon. Kirby Kongable
Mr. Marty Krizay
Hon. Kenneth Lee
Hon. Denis Lundin
Hon. Margaret Maxwell
Hon. Stephen McCarville
Hon. Leslie Miller
Hon. Barbara Mundell
Mr. Marcus Reinkensmeyer
Hon. Nanette Warner
Hon. Raymond Weaver

MEMBERS ABSENT:

Hon. Bethany Hicks

Mr. Charles W. Wirken, Esq.

GUESTS:

Hon. Jeffrey Coker
Mr. George Diaz, Jr.
Mr. Mike DiMarco
Ms. Jennifer Greene
Ms. Patience T. Huntwork
Mr. Bob James
Mr. Phil Knox
Ms. Karen Kretschman

Ms. Sandi Markham
Ms. Susan Pickard
Mr. David Sands
Ms. Ellen Seaborne
Ms. Nancy Swetnam
Ms. Kathy Waters
Mr. David Withey

STAFF:

Ms. Theresa Barrett

Ms. Chris Claxton

REGULAR BUSINESS

Welcome and Opening Remarks Hon. Fred Newton

Judge Fred Newton, Chair, called the meeting to order at 10:10 a.m. He welcomed everyone and acknowledged new members, Judges Norman J. Davis and Barbara R. Mundell. All in attendance introduced themselves.

Approval of Minutes - September 27, 2002 Hon. Fred Newton

The minutes from the September 27, 2002 meeting were previously distributed electronically. Revisions and corrections received from members prior to the meeting were incorporated by staff. Copies of the revised minutes were provided for review at this meeting.

MOTION: Judge Arellano moved to approve the minutes for the September 27, 2002 meeting as revised. Seconded and passed unanimously. COSC-03-001

BUSINESS ITEMS/POTENTIAL ACTION ITEMS

Pending & Proposed Rules Update Ms. Patience T. Huntwork

Ms. Huntwork, Chief Staff Attorney, Arizona Supreme Court, reviewed the Rules Agenda for January 14, 2003.

Final Adoption

- < Omnibus rewrite of the Superior Court Rule of Appellate Procedure, Criminal
- < Rule change regarding unauthorized practice of law
- < Total re-write of the Arizona Tax Court Rule of Practice
- < Rule regarding destruction and retention of Justice and Municipal Court records
- < Streamlining of the criminal complaint filing processes
- < Rule regarding victims rights and the posting and notification of victims rights
- < Rule change regarding judicial free speech
- < Rule regarding initial appearance masters in Superior Court
- < Rule change regarding complex cases in Maricopa County Superior Court

Going out for Comment

- < Rule Petition regarding omnibus rewrite of the attorney discipline rules
- < Rule Petition to allow video taping of depositions as a matter of right
- < Rule Petition regarding change regarding the Commission on Appellate and Trial Court Appointments
- < Rule Petition regarding omnibus rule change regarding attorney ethics
- < Rule Petition regarding change requiring all CLE to be certified

A new service to e-mail all judges, clerks of court and court administrators notification of the publication of rule actions to the web site at <http://www.supreme.state.az.us/rules> has been established.

Notification of Comment Period for Rule 28 Petitions Ms. Jennifer Greene

Ms. Greene, Administrative Office of the Courts (AOC), presented the proposed provision of rule petition notification to AJC standing commissions, committees, and subcommittees by the Court Services Division. She requested a committee contact to receive the periodic reports.

ACTION ITEM: Judge Ishikawa will serve as contact. If necessary, a subcommittee will be established by the Chair.

Minute Entry Reform Workgroup Hon. Denise Lundin & Hon. Jeffrey Coker

Judge Coker and Ms. Lundin, Workgroup Co-Chairs, presented a draft proposed Supreme Court Rule Petition to standardize and define minute entries, noting that it is still being refined.

Discussion points:

- < Allocation of, and cooperation regarding, responsibility for minute entries.
- < Implementation in various counties.
- < Use of minute entries for under advisement/out of court rulings.
- < Cooperation between elected officials.

MOTION: Michael Jeanes moved to approve the Minute Entry Reform Workgroup proposal and support its continuing efforts.

AMENDED MOTION: Michael Jeanes moved to support the continuing efforts of the Minute Entry Reform Workgroup. Seconded and passed, 21-1-0, Judge Warner opposed. COSC-03-002

Integrated Family Court Committee: Update and Q & A Mr. Phil Knox

Mr. Knox reminded the members that the Integrated Family Court Committee presented their plan hoping for a vote of support at this committee's September meeting. Needing further time on the proposal, the committee asked Mr. Knox to return to today's meeting. In light of the current actions being taken by the Domestic Relations Committee and the AJC, a vote of support was not being requested. Instead, Mr. Knox provided the members with an updated status of the Integrated Family Court.

The Arizona Judicial Council (AJC) met on December 12, 2002. Ellen Seaborne, Chair of the Integrated Family Court Workshop, provided background information on the Workgroup and its plan and then outlined and presented each of the ten recommendations and the proposed bill. The AJC, recognizing many favorable and useful elements within the plan, determined to withhold any recommendation at this time in order to complete further analysis of parts of the plan that can be implemented and parts that cannot. As part of the Court's current Strategic Plan, adopted in January 2002, the Supreme Court will establish pilot family court programs in at least two counties, one large and one small, to experiment with various components of the proposal. The Court will report its progress to the Council and it is anticipated the Court will formulate wider and more substantial implementation in the future.

On January 10, 2003, the Domestic Relations Committee met. Representative Johnson, noting the results of the AJC meeting and a meeting with the Chief Justice and Terry Goddard, announced the decision not to take the Plan forward with legislation at this time. This would give the courts the opportunity to pilot the plan in two counties as proposed by AJC.

Also, on January 10, 2003, AOC staff held preliminary discussions with Judges Campbell, Armstrong and Newton regarding the pilot projects stemming from the AJC meeting.

Discussion Item:

- < Funding for either the establishment of IFC statewide and/or pilot programs.

Domestic Violence Forms Revisions Mr. Bob James

Mr. James, Committee on Domestic Violence and the Courts - Domestic Violence Forms Workgroup Chair, provided the committee with an update on the recommended revisions to the domestic violence forms and AZTEC module. Revisions were made under the workgroup's charge to streamline the mandated forms for the benefit of judicial officers, judicial staff, and litigants; and to conform to the technologies which produce Protective Orders.

Discussion Items:

- < Forms should comply with Rule 10 margin specifications for Superior Court.
- < Specific inquiries and wording suggestions.
- < PCO Codes.

ACTION ITEM: Mr. James requested a representative, preferably a judicial officer, from this committee to participate in the revision process. Judge Warner will serve as a COSC representative on the Domestic Violence Forms Workgroup.

MOTION: Judge Arellano moved to support CIDVC's direction in revising the Domestic Violence forms and recommendations to change aspects of AZTEC. Seconded and passed unanimously. COSC-03-003

Judicial Ethics Advisory Opinion 01-01: Update Hon. Patricia Escher

At the Committee's September meeting, Judge Escher agreed to take members concerns back to the Judicial Ethics Advisory Committee (JEAC) to determine if Opinion #01-01 could be revised. Judge Escher provided the members with some background information and addressed the concerns expressed in the September 27, 2002, meeting.

- < The requirement that you give the attorneys the opportunity to object to post-verdict contact of the jurors outside their presence. JEAC revisited the issue and concluded that post-verdict contact of jurors by the judge does have an appearance of impropriety if there is an objection by an attorney.
- < Criminal and civil cases should be treated differently. No reason for change was indicated so no change was made to the opinion.
- < How is the judge supposed to notify the parties if there has been an improper communication after the trial? The opinion will be clarified noting the parties must be notified of the communication and its substance on the record.
- < Expressions of gratitude to the jurors. The opinion will be changed to include a sentence that indicates a generic expression of appreciation for jury service may be sent to jurors, if the judge routinely sends letters to all jurors.
- < It was not the intent of the opinion to prohibit the use of generic juror questionnaires meant to improve the jury experience. The opinion will be changed to indicate that juror questionnaires are permissible.

The revised opinion will be issued upon JEAC approval which is expected within two weeks and will be forwarded to the members by staff.

2003 AJC Legislative Package Mr. David Sands & Mr. George Diaz, Jr.

Mr. Sands, Mr. Diaz, and Mr. Adkins, AOC Legislative Officers and Specialist presented the 2003 Legislative Package for information purposes. The proposals include:

- < Conciliation Services Revenue Enhancement
- < Protection of Judges' Personal Information
- < Parent Education Program Support
- < Age for use of Confidential Intermediary
- < Parental Responsibility for Juvenile Costs
- < Deferred Retirement Option Plan
- < Administrative Assessment

On January 17, 2003, David Sands will resume the Friday Legislative Teleconference Calls to discuss and garner your feedback on bills that important to the court. The teleconference number is (602) 542-9015. Discussion will begin at 12:00 for legislation that affects Limited Jurisdiction Courts with the Superior Court discussion beginning at 1:00.

Budget Briefing Mr. Mike DiMarco

Mr. DiMarco presented the FY 2003 Budget Update for informational purposes as requested by Judge Newton. The last eighteen months have seen a number budget cuts for the Judiciary, totaling \$21.7M. The Judiciary's portion of the FY 2004, \$1B+ shortfall has not yet been determined.

Mr. DiMarco also enumerated the revenue replacement plan, Penalty Enforcement Plan (PEP), and reviewed Administrative Order 2002-113 as issued by the Chief Justice declaring a fiscal emergency in the Judiciary.

Budget Impact Update & Officer Safety Update Ms. Kathy Waters

Ms. Waters provided updated materials to the members and explained the impact of budget cuts on Adult Probation as follows:

- < 50% Accrued Vacancy Savings (\$546K)
- < Administrative Reductions (\$212K)
- < Reduction in CPP (\$1.5M)
- < Elimination of IPS Committed Reserve (\$196K)
- < Elimination of Rural Growth (\$130K)
- < Elimination of IPS Teams (\$306K)
- < Elimination of IS Non-Case Carrying FTE (\$28K)
- < Elimination of Report Only Supervision (\$875K)
- < IPS Program Reduction (\$957K)

Next, Ms. Waters went over proposed changes to Arizona Code of Judicial Administration § 6-107, Safety Training and § 6-112, Use of Force.

MOTION: Judge Escher moved to approve the revisions to Arizona Code of Judicial Administration § 6-107 Safety Training and § 6-112 Use of Force. Seconded and passed unanimously. COSC-03-004

Arizona Code of Judicial Administration Project Mr. David Withey

Mr. Withey stated he was in attendance to explain, encourage and ensure the committee's participation in the code review and comment process. This committee meeting only three times a year has proven problematic to this process and the limited comment time frame. Mr. Withey noted the possible options available as solutions.

- < Create and delegate authority for reviewing proposed code sections and drafting comments to a subcommittee.
- < Create an additional meeting each year to be in keeping with AJC meeting schedules.
- < Schedule telephonic conferences as needed.
- < Develop an electronic process for code review and approval.

MOTION: Judge Arellano moved to delegate the committee's authority to speak for the group regarding code comment and review to Judge Newton with Judge Newton creating ad hoc subcommittees as needed. Proposed comments would then be circulated to all members prior to submission. Seconded and passed unanimously. COSC-03-005

OTHER BUSINESS - Presented out of agenda order - awaiting the next speaker

Information Items Ms. Theresa Barrett

Ms. Barrett updated the members on the budget cut impact to committees, committee staff and staff support and requested that documents that need to be distributed be given to committee staff as early as possible.

Ms. Susan Pickard demonstrated two web-based options for distribution of meeting agendas, minutes, and handouts and requested that the members select an option for COSC. The table format was selected. For their convenience, members will be sent an e-mail reminder with the website link.

BUSINESS ITEMS/POTENTIAL ACTION ITEMS - Presented out of agenda order - the speaker arrived.

Court Reporter E-Notes Ms. Nancy Swetnam

Ms. Swetnam explained court reporter record retention requirements and methods. New technology methods are available to maintain the records electronically. To ensure full discussion of the implications, Ms. Swetnam requested representation (judges and clerks of court) from this committee to work on this issue.

ACTION ITEM: Ms. Carol Shriver, Mr. Ken Krenshaw and Judge Kearny were recommended for consideration. Judge Warner will serve as back-up in the event that Judge Kearny is unable to participate.

FUTURE AGENDA ITEM: Judge Weaver suggested that a future meeting the committee entertain rules of criminal procedure regarding retention time requirements of court report notes. Judge Newton agreed, citing recent changes in California regarding the issue.

OTHER BUSINESS

Recognition of Service Hon. Fred Newton

In honor of their dedicated service and in appreciation for their commitment to the Committee on Superior Court members recognized: Judge Roger Kaufman (10/95-9/02) and Judge Mark Armstrong (6/00-12/02). Judge Newton requested the minutes reflect the Committee's appreciation. There were no objections.

Next Meeting Date/Place Hon. Fred Newton

The next meeting will be held on Friday, June 6, 2003, at 10:00 a.m. The meeting location is the State Courts Building, 1501 W. Washington, Conference Rooms 119 A & B.

Good of the Order/Call to the Public Hon. Fred Newton

No respondents.

ADJOURNMENT

The meeting was adjourned at 2:50 p.m.